

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DERRICK LAMAR MCKNIGHT,

Case No. 3:17-cv-00681-MMD-CLB

Petitioner,

ORDER

v.

WARDEN BAKER, *et al.*,

Respondents.

In his amended 28 U.S.C. § 2254 habeas corpus petition Derrick Lamar McKnight challenges his Clark County, Nevada conviction pursuant to jury trial of charges including robbery and first-degree murder with use of a deadly weapon. (ECF No. 48.) He is serving a term of life without the possibility of parole. (ECF No. 56-18; Exh. 68.)

Respondents have moved to dismiss the petition as untimely and contend that certain claims are unexhausted and/or procedurally defaulted. (ECF No. 54.) McKnight, represented by counsel appointed pursuant to the Criminal Justice Act, concedes in his opposition that his original *pro se* federal petition was untimely, but he argues that he is entitled to equitable tolling of the statute of limitations. (ECF No. 68.) In Respondents' reply, they acknowledge that they miscalculated the statute of limitations in their motion, though they argue that the petition remains untimely. (ECF No. 72.) Then they argue, for the first time, that if this Court deems the original petition timely, numerous claims in the amended petition do not relate back to the original petition. (*Id.* at 11-15.) McKnight of course has had no opportunity to respond to these new arguments.

The Court concludes that justice and judicial efficiency is best served by denying the motion to dismiss without prejudice. Respondents may file a renewed motion to dismiss that presents all of their arguments. Arguments raised in a renewed reply will not

1 be considered. The Court also notes that it is unlikely to grant any extensions of the
2 briefing schedule.

3 It is therefore ordered that Respondents' motion to dismiss (ECF No. 54) is denied
4 without prejudice as set forth in this order.

5 It is further ordered that Respondents file a renewed motion to dismiss, if any,
6 within 30 days of the date of this order.

7 It is further ordered that Petitioner file a response to a renewed motion to dismiss
8 within 30 days of the date that Respondents file and serve their motion.

9 It is further ordered that Respondents file any reply within 15 days of the date that
10 Petitioner files and serves his opposition.

11 DATED THIS 19th Day of September 2023.

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15 MIRANDA M. DU
16 CHIEF UNITED STATES DISTRICT JUDGE
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